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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947.

No. 450

PETER L. GUTH,
Petitioner,

vs.

THE TEXAS COMPANY,
Respondent.

REPLY OF PETITIONER TO ANSWER OF RESPONDENT.

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Counsel for Respondent make some statements which call for answer and comment. For instance, at the bottom of page 3 they say: "In opposition to this the evidence shows that the respondent not only did not 'refuse' to build such plant, but actually did build it and did utilize the casinghead gas at the earliest possible time." to create the impression in the mind of the court that they used *all* the gas after the plant was built. As a matter of fact, they used not to exceed approximately 2% of the

gas produced. Their superintendent testified, "It was a long time after the plant was in operation that we ceased to burn gas on the Schereshoveck and Chapman leases. We tried insofar as we could, to take that gas equitably from all the leases we have in the Salem pool." (R. 105). That evidence was brought out by defendant's counsel from their own witness. Three disinterested witnesses testified that the flares were "50 to 60" feet high (R. 112, 121, 124). The answer of the defendant admits burning the gas, without qualification as to time (R. 27). Defendant's superintendent testified that they produced a "large volume of gas" "there was no means possible of taking care of such an enormous volume of gas" (R. 103). Now counsel have reduced it to $300 worth, and the court did not give us even that, admitted by counsel (R. 175).

With reference to the computations concerning which they complain, the general superintendent testified that the pipes were 2" to 4" in diameter (R. 47); were from 100 to 150 feet long (50 feet in height brought the length to 200 feet) (R. 47); the pressure was 12 to 15 pounds (R. 50); the average depth of the wells was 2500 feet, the temperature was 1° per hundred feet (R. 74) which with the base of 60° added brought it to 85°; that the specific gravity was 1.16 (R. 76), which gives us all the information needed, *from defendant's own records* for computation of the amount of gas flowing through those pipes, in accordance with the Weymouth Formula (R. 131), concerning which counsel for defendant said: "He is entirely correct that the Weymouth Formula for the flow of natural gas through pipe lines is generally accepted." (R. 174). The correctness of the computations was never attacked.

Again at page 8, their statement indicates that as soon as the plant was built they took all the gas. The flares, as shown by the testimony of their superintendent continued

for years after the plant was built. Counsel were very careful not to say that they took all the gas after completion of the plant, yet they tried to create that impression. Again at page 4, they say "Again in the same paragraph petitioner, speaking of the gas which could not be marketed or utilized prior to construction of the plant". That is another statement which assumes something which did not exist. All of the gas could have been marketed, had they wanted to. We spoke, not of the gas prior to the construction of the plant, *but of all the gas produced,* of which less than 1% per cent was produced prior to building the plant (R. 56, 58).

In point III, defendant claims to own the gas, but has never paid for 98% of it. In the case of *Jilek* v. *C. W. & F. Coal Co.,* 382 Ill. 241, cited under this head, the Supreme Court in passing on a mineral deed such as that held by the petitioner, said at page 248. "He is the owner of the mineral estate". Just how defendant can claim ownership without payment therefor under that case is not explained. True, the Circuit Court said it was the owner, *but coupled with it the statement that they owed the royalty therefor.* In the *Jilek* case the court was talking about the grantee (the petitioner in this case), no lease or lessee was involved. When counsel used the expression "grantee or lessee", they called on their imagination for the "lessee". In a number of other cases they state facts by assumption or innuendo which are simply not true. We stated facts baldly, instead of innuendo because we were ready to stand back of them as the truth.

PETER L. GUTH,
Petitioner,

Per ALBERT H. FRY,
His Attorney.